IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8512 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABUJI LUMBAJI PANCHAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8512 of 1991

MS KUSUM M SHAH for Petitioner No. 1

MR BY MANKAD, AGP for Respondent

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 12/02/2002

ORAL JUDGEMENT

1. The petitioner is in occupation of a small plot of land which is near the Bus Stand in Village Tharad, District Banaskantha. According to the petitioner, the land was granted on lease by the Gram Panchayat to his

father. The lease was granted on 30.12.1968 and since then it was in possession of his father. After the death of his father, the said plot of land is in his possession. The petitioner is carrying on the business of blacksmith in the workshop constructed thereon.

2. The petitioner thereafter filed his application before the Collector for regularisation of the said construction. The Collector by his order dated 29th October, 1985, rejected the said application and passed order on certain conditions on which the land can be regularised. The Collector by his order dated 26th April, 1989, pleased to reject the said application.

3. Being aggrieved and dissatisfied with the said order the petitioner filed revision application before the Government and the Special Secretary has also rejected his revision application.

4. Ms.Kusum Shah, learned advocate for the petitioner stated that it is not in dispute that the earlier plot in question was in possession of his father since the year 1968 and thereafter in the possession of the petitioner. She has also stated that in the present petition when petitioner challenged the order of Special Secretary (Revenue), this Court by its order dated 29th November, 1991, admitted the matter and granted stay and possession of the petitioner has been protected since then.

5. Mr.B.Y.Mankad, learned AGP appeared on behalf of the respondent. He has stated that one Shri G.R.Parmar, Mamlatdar, Tharad has filed affidavit and opposed the petition in this behalf. It has been stated that the claim of the petitioner for regularisation of land can not be said in view of the situation of the land in question and particularly the fact that the Government has acquired surrounding land of the land in question for the extension of Bus Station which is not the reason in the case of other persons whose encroachments have been regularised.

6. When the aforesaid matter was placed for hearing before this Court, this Court (Coram: Hon'ble Chief Justice D.M.Dharmadhikari) by his order dated 12.1.2001 had given time to the learned AGP to take instructions from the concerned authority and find out whether instead of the present plot in dispute any other unobjectionable site nearby can be allotted to the petitioner on reasonable premium on lease so that he is not deprived of his source of livelihood.

7. Thereafter the matter was placed for hearing before this Court (Coram: Y.B.Bhatt, J.) on 24.4.2001, at that time the learned advocate for the petitioner stated that the petitioner is prepared to accept any available land in or around Tharad of the approximate area of 25 ft. x 20 ft. The concerned respondent shall inquire, investigate and locate an appropriate piece of land or pieces of land which can be offered to the petitioner, and communicate the details thereof to the petitioner and also to the counsel of the petitioner. After such details are communicated to the petitioner and his counsel, the petitioner shall exercise his choice as indicated herein, within 30 days of such communication.

8. It appears that thereafter the petitioner has approached the Mamlatdar, Tharad and the Mamlatdar has addressed a letter dated 12th July, 2001 to learned AGP, High Court of Gujarat, in which it has been stated that the petitioner is prepared to accept land nearby Vijay Tokij and or near Tharad Bus Stand. However at that time the petitioner states that he was not prepared to take said plot of land in this behalf. The statement of the petitioner dated 22.2.2001 which has been recorded by the Mamlatdar is also produced in this behalf.

9. Today learned advocate for the petitioner states that, as per the order of this Court dated 12.01.2001 and 24.4.2001 and as per further communication of the Mamlatdar dated 12.7.2001, if petitioner was offered the land which is situated on the road going from Tharad Bus Stand to Tharad Cross Road where other steel factories are already situated at one k.m. distance from the disputed land then petitioner was consider the said request.

10. In view of the same, the Collector is directed to offer to the petitioner an alternative plot within two months after receipt of the order and petitioner is directed to exercise his option for the aforesaid plot of land within two months thereafter. The authorities may consider the request of the petitioner and as per their communication dated 12.7.2001 if there is no other objections the authorities may be pleased to grant said land to the petitioner which has been offered as stated in their communication dated 12.7.2001 within one month from the date of receipt of the option of the petitioner.

11. Inspite of the aforesaid direction if petitioner fails to exercise this option or reject the option than in that case his case will not be considered for granting

of alternative land in future.

12. In view of the above, the interim stay order granted by this Court in the year 1991 will continue till the Collector offers alternative plot to the petitioner in exercise the option. If the petitioner ultimately accept the offer or reject the option from that day onwards the interim relief will be vacated.

13. In view of the aforesaid directions, the petition is disposed of accordingly. Rule is discharged. No order as to costs.

(K.M. Mehta, J.)

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